REMARKS

Claim Objections

In the Office Action, claim 1 was objected to because of a wording error. Claim 1 has been amended herein to correct the wording error. Applicants request that the claim objection be withdrawn.

Section 112 Rejections

Claim 1 was rejected to under 35 U.S.C. § 112, ¶ 2, as being indefinite. Applicants have amended claim 1 to address the rejections and submit that the § 112 rejection should be withdrawn in view of the claim amendments.

Section 101 Rejections

The pending claims were rejected in the Office Action as being directed to non-statutory subject matter under 35 U.S.C. § 101. In this amendment, applicant has amended claim 1 so that the claimed method is tied to a particular machine, including a transaction computer system and a computerized electronic transfer system. In addition, claim 1 has been amended to recite a step involving a physical transformation, i.e., "supplying electricity from a power supplier to the recipient." Accordingly, applicants submit that claim 1 and its dependent claims satisfy § 101. *See In re Bilski*, 545 F.3d 943, 88 USPQ2d 1385, 1391 (Fed. Cir. 2008) (*en banc*) ("A claimed process is surely patent-eligible under § 101 if: (1) it is tied to a particular machine or apparatus, or (2) it transforms a particular article to a different state or thing.") (emphasis in original).

Section 103 Rejections

In the Office Action, the pending claims were rejected as being obvious under 35 U.S.C. § 103(a). Applicants traverse the rejections because the Office Action (1) draws unsupported implications based on the prior art and (2) makes factually erroneous findings regarding the prior art. These points are addressed in order below.

First, the Office Action states that the background section of the present application "*implies*" several limitations of independent claim 1, but these implications are unsupported. Therefore, it is improper for the Office to make these implications. *See e.g.,* MPEP § 2112 ("The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic.") (emphasis in original). For example, in addition to other implications, the Office Action makes the following implications about the background for which there is no support:

- That the original contract does not give the original supplier the right to make make-up deliveries following a period of force majeure. The background nowhere implies this, and it is just as likely that the original contract did provide the original supplier the right to make make-up deliveries following a period of force majeure. Indeed, prior art energy supply contracts often had force majeure make-up provisions. For example, the transaction structure for the Utility Contract Funding, LLC offering, the prospectus for which was submitted with applicants' IDS filed January 8, 2004, at page 43, makes clear that the power purchase agreement for this transaction in fact had a make-up deliveries provision for force majeure conditions.

- That the reserve account is sufficiently funded to make debt service payments on the debt instruments when the first entity is unable to supply the commodity (e.g., electricity) to the recipient because of a force majeure condition for a predetermined period of time. In fact, there is no such implication in the background. It is just as plausible that the original contract had force majeure make-up provisions which would obviate the need to fund the reserve account to cover debt service payments during a force majeure condition since the first entity would be able to make-up the missed deliveries with the make-up deliveries.

Second, the Office Action makes factually erroneous findings regarding the prior art. These factually erroneous findings include (a) that Helms teaches a method where "the first (original) contract does not give the (original) supplier the right to make make-up deliveries following a period of force majeure…" and (b) that Miller teaches "a reserve account that is sufficiently funded to make debt service payments on the debt instruments when the first entity is unable to supply the commodity to the recipient because of a force majeure condition for a predetermined period of time…"

Regarding Helms, as pointed out in the Office Action, Helms discloses that the utility (i.e., the recipient) has the right to purchase power on the open market if a performance default occurs. The utility will need this right whether or not there are force majeure make-up provisions in the supply contract because it needs to procure electricity for its customers during the period of default. This has nothing to do with whether the supplier can subsequently make up for the missed deliveries after the period of non-performance, and Helms is silent on this issue. Therefore, Helms does not disclose a method where "the first (original) contract does not give the (original) supplier the right to make make-up deliveries following a period of force majeure…"

The Miller reference is about project financing, a type of debt financing that does not rely for repayment on the general corporate credit of an operating company, but instead relies on dedicated, sometimes contract-based revenues from a single asset or a defined group of assets held by a special purpose vehicle. *See* Miller at p. 1. Project financing typically is used for constructions project, and, as stated in Miller at p. 4, the risk of delay in completion of the construction project is customarily addressed through the imposition of liquidated damages on the construction contractor. Miller discloses that the amount of liquidated damages is calculated to cover project debt service payable during the period of delay. *See* Miller at p. 4. Liquidated damages, however, are different from a pre-funded reserve account. Liquidated damages are the damages that the financiers can recover from the contractor in the event of default by the contractor. The liquidated damages amount represents a good faith estimate of the actual damage that will probably ensue from the breach. If the contractor does not have funds to pay the liquidated damages, however, the financiers do not recover.

Sufficiently funding a reserve account, therefore, is different from a liquidated damages clause in a contract because it is funds set aside for, in this case, the force majeure time period.

The Office Action also cited pages 10 and 27 of Miller as disclosing a reserve account that is sufficiently funded to make debt service payments on the debt instruments when the first entity is unable to supply the commodity to the recipient because of a force majeure condition for a predetermined period of time, but these pages of Miller never mention funding reserve accounts to handle debt service payments for force majeure time periods.

For at least these reasons, applicants submit that claim 1 is not obvious in view of the cited reference. In addition, at by virtue of their dependence upon nonobvious claim 1, applicants submit that the pending dependent claims are not obvious in view of the cited references. *See* MPEP § 2143.01.

CONCLUSION

Applicants respectfully submit that all of the claims presented in the present application are in condition for allowance. Applicants' present response should not in any way be taken as acquiescence to any of the specific assertions, statements, etc., presented in the Office Action not explicitly addressed herein. Applicants reserve the right to address specifically all such assertions and statements in subsequent responses. Applicants also reserve the right to seek claims of a broader or different scope in a continuation application.

Applicants do not concede the correctness of the Office Action's rejection with respect to any of the dependent claims discussed above. Accordingly, Applicants hereby reserve the right to make additional arguments as may be necessary to distinguish further the dependent claims from the cited references, taken alone or in combination, based on additional features contained in the dependent claims that were not discussed above. A detailed discussion of these differences is believed to be

unnecessary at this time in view of the basic differences in the independent claims pointed out above.

Applicants have made a diligent effort to properly respond to the Office Action and believe that the claims are in condition for allowance. If the Examiner has any remaining concerns, the Examiner is invited to contact the undersigned at the telephone number set forth below so that such concerns may be expeditiously addressed.

Respectfully submitted,

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